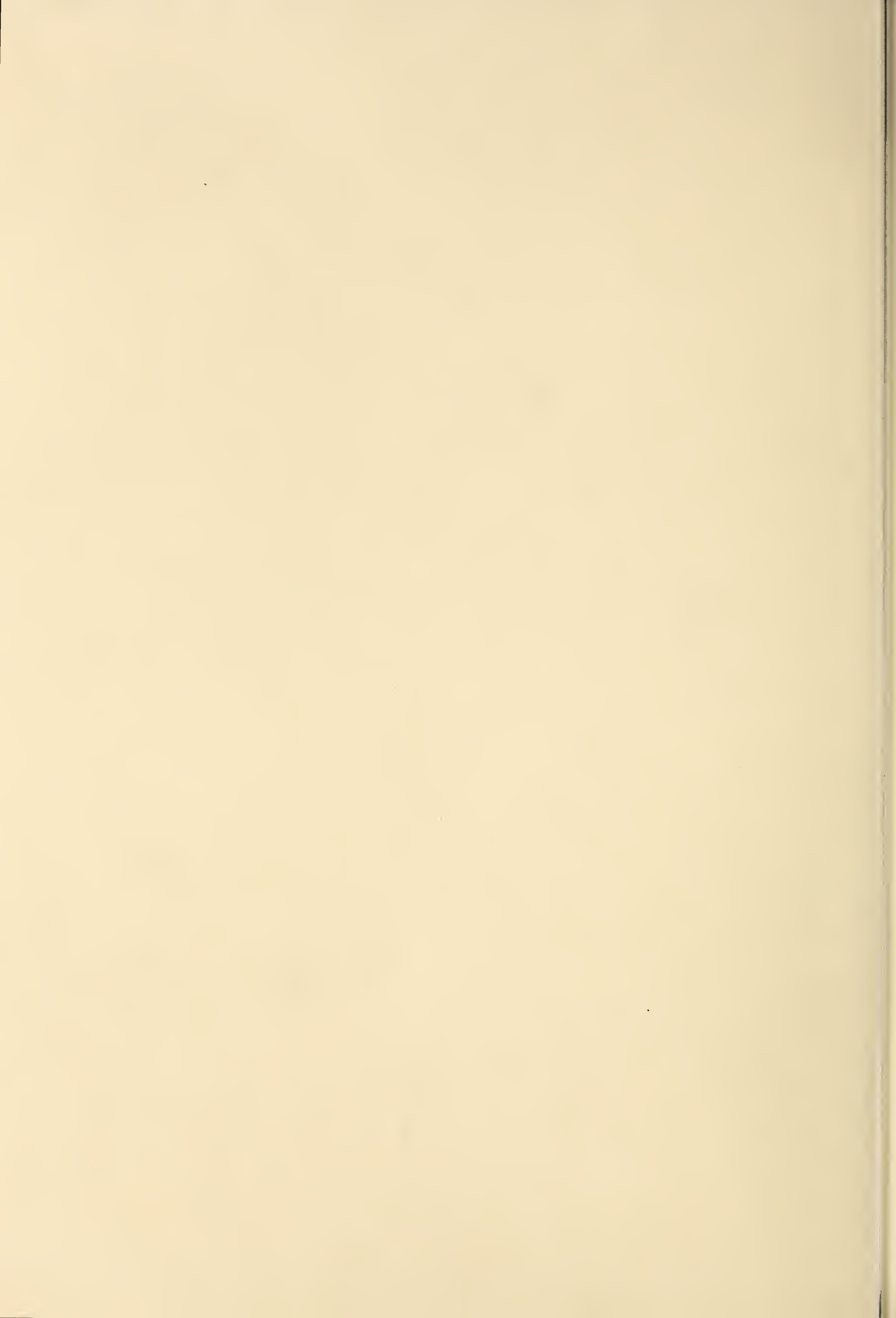


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United States Department of Agriculture
PRODUCTION AND MARKETING ADMINISTRATION
SERVICE AND REGULATORY ANNOUNCEMENTS NO. 143, REVISED

GRADES, REQUIREMENTS, AND REGULATIONS OF THE
SECRETARY OF AGRICULTURE FOR CARRYING OUT
THE PROVISIONS OF THE EXPORT APPLE AND PEAR
ACT

(Title 7, Ch. I, Pt. 33; Code of Federal Regulations, as Amended)

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Pursuant to the provisions of the so-called Export Apple and Pear Act, approved June 10, 1933 (48 Stat. 123; 7 U. S. C. 581 *et seq.*), the regulations (7 CFR and Supps. 33.1 *et seq.*) issued thereunder, effective March 6, 1944, are hereby revised to read as follows:

DEFINITIONS

33.1 Meaning of words.—Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

33.2 Definitions.—Each term defined in the act shall, when used in the regulations in this part, have the same meaning as set forth in said act. When used in this part, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof:

(a) "Act" or "Export Apple and Pear Act," means "An act to promote the foreign trade of the United States in apples and/or pears, to protect the reputation of American-grown apples and pears in foreign markets, to prevent deception or misrepresentation as to the quality of such products moving in foreign commerce, to provide for the commercial inspection of such products entering such commerce, and for other purposes," approved June 10, 1933 (48 Stat. 123; 7 U. S. C. 581 *et seq.*).

(b) "Person" means an individual, partnership, association, or corporation.

(c) "Department" means the United States Department of Agriculture.

(d) "Secretary" means the Secretary of the United States Department of Agriculture or any person to whom authority has heretofore lawfully been delegated or to whom authority may hereafter lawfully be delegated to act in his stead.

¹ This announcement was originally issued as Service and Regulatory Announcements No. 143 of the Bureau of Agricultural Economics. In revised form, it is issued by the Production and Marketing Administration, which is now responsible for the administration of the Export Apple and Pear Act.

(e) "Administration" means the Production and Marketing Administration, United States Department of Agriculture.

(f) "Administrator" means the Administrator of the Production and Marketing Administration, United States Department of Agriculture, or any officer or employee of the Administration to whom authority has heretofore lawfully been delegated or to whom authority may hereafter lawfully be delegated to act in his stead.

(g) "Branch" means the Fruit and Vegetable Branch of the Administration.

(h) "Director" means the Director of the Branch or any officer or employee of the Branch to whom authority has heretofore lawfully been delegated or to whom authority may hereafter lawfully be delegated to act in his stead.

(i) "Carrier" means any common or private carrier, including, but not being limited to, trucks, vessels, tramp or chartered steamers whether carrying for hire or otherwise.

(j) "Apples" means fresh whole apples whether or not they have been in storage.

(k) "Pears" means fresh whole pears whether or not they have been in storage.

(l) "Less than carload lots" means any lot of apples or pears of less than 400 bushels in packages.

(m) "Farm Products Inspection Act" means the following provisions of the Department of Agriculture Appropriation Act, 1947 (Pub. Law 422, 79th Cong. 2d sess.), or any other act of Congress conferring similar authority:

For enabling the Secretary to investigate and certify, in one or more jurisdictions, to shippers and other interested parties the class, quality, and condition of cotton, tobacco, fruits, and vegetables, whether raw, dried, canned, or otherwise processed, poultry, butter, hay, and other perishable farm products when offered for interstate shipment or when received at such important central markets as the Secretary may from time to time designate, or at points which may be conveniently reached therefrom under such rules and regulations as he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered * * *.

(n) "Certificate" or "export form certificate" means a statement that a designated lot of apples or pears meets the requirements of the Export Apple and Pear Act included in and made a part of (1) a certificate issued under the Farm Products Inspection Act or under section 14 of the Perishable Agricultural Commodities Act, 1930, as amended (46 Stat. 531; 7 U. S. C. 499a *et seq.*), or (2) a memorandum in a form approved by the Director and issued in lieu of an export form certificate.

ADMINISTRATION

33.3 Director.—The Director shall perform, for and under the supervision of the Secretary and Administrator, such duties as the Secretary or Administrator may require in the administration and enforcement of the act and the regulations in this part.

MISCELLANEOUS

33.4 Inspection certificate.—The regulations issued under the Farm Products Inspection Act governing the inspection and certification of fresh fruits and vegetables, as amended (7 CFR 51.1 *et seq.*) and as the same may, from time to time, be amended, insofar as the aforesaid regulations apply to apples or pears, are hereby adopted and made a part of the regulations in this part for the purposes of the act except when in conflict with specific regulations herein set forth; and all persons authorized to issue certificates of grade or condition of fresh fruits and vegetables under the said Farm Products Inspection Act are authorized to issue the certificate required, under the act and under the regulations in this part, for apples and pears.

33.5 Form of certificate.—A Farm Products Inspection Act certificate bearing in prominent letters across the face thereof the words "Export Form Certificate" shall, when issued hereunder, be issued only for apples or pears inspected and certified in accordance with the provisions of the act and the regulations in this part and shall include the following printed or typed statement: "The apples or pears covered by this certificate meet the requirements of the Export Apple and Pear Act."

33.6 Analysis; certificate.—If the apples or pears in any shipment for export are to be analyzed for any spray residue and the chemist's report is not available at the time the inspection for grade is finished, the inspector may, if practicable, issue a certificate subject to its being rescinded within 48 hours after issuance should the chemist's analysis show that the apples or pears do not comply with the tolerances for any such spray residue established under the Federal Food, Drug, and Cosmetic Act, as amended (52 Stat. 1040; 21 U. S. C. 301 *et seq.*).

33.7 Delivery of certificate.—If, at the time of billing for shipment in export, a certificate shall have been issued under the provisions of the act and the regulations in this part, such certificate or a copy thereof, on a form approved by the Director, shall be delivered by the shipper or his agent to the initial carrier for delivery to the proper official of any carrier on which the apples or pears, covered by the certificate or the copy thereof, as aforesaid, are to be exported.

33.8 Requirements for shipments.—(a) *Export of apples or pears.*—No person shall ship, offer for shipment, transport, or offer for transportation to a foreign country apples or pears in packages except in accordance and compliance with the requirements hereof and only if a certificate has been issued with respect to such apples or pears.

(b) *No acceptance for export without certificate.*—A shipment of apples or pears in packages shall not be accepted for export by any carrier unless such shipment is accompanied by a certificate or a copy thereof, on a form approved by the Director, and such certificate or a copy thereof has been surrendered to the carrier.

(c) *Split shipments.*—When a certificate has been issued covered a lot of apples or pears and the shipper desires to export part of the lot by one carrier and part by another carrier, such certificate or copy thereof, as aforesaid, shall be delivered to each carrier.

(d) *Representation of issuance, without copy of certificate, not acceptable.*—No carrier shall accept for shipment a part of a lot of apples or pears in packages upon the representation by the shipper or his agent or by the initial carrier that a certificate has been issued covering the entire lot of such apples or pears, but shall require that such certificate or a copy thereof, as aforesaid, be delivered to such carrier.

33.9 Method of inspection and certification.—When a shipment of apples or pears in packages is made to a foreign country under a through bill of lading or under a bill of lading marked for export, the shipper shall, except as provided in sec. 33.18, secure inspection of the apples or pears in such shipment and deliver to the local agent of the carrier the certificate or copy thereof, as aforesaid, covering such shipment. Such local agent shall attach such certificate or copy thereof to the waybill or make a notation on the waybill that the fruit has been inspected and that a certificate has been issued as provided herein. Inspection of a shipment of apples or pears in packages, not under a through bill of lading to a foreign country or not under a bill of lading marked for export, may be obtained at point of origin of such shipment, if inspection is available, or at any convenient point en route to or at destination.

33.10 Noncertificated shipments; handling.—Any person operating any carrier shall, within 72 hours after such carrier sails from any port, send to the Director of the Fruit and Vegetable Branch, Production and Marketing Administration, Washington 25, D. C., a list of all shipments of apples or pears in packages on board such carrier which are not accompanied by certificates or copies thereof, as aforesaid, and shall give all particulars with reference thereto, including, but not being limited to, destination, quantity, description, marks, names and addresses of shippers and consignees, and names of railroads or persons having delivered such shipments to such carrier, with car numbers or other means of identification. The furnishing of the foregoing information shall not relieve any person operating a carrier, as aforesaid, from liability under the act or the regulations in this part if the facts warrant prosecution.

33.11 Special certificates.—A special certificate in compliance with the standards or requirements of any foreign country as to condition of apples or pears shall, as authorized by section 3 of the act, be issued as a part of, or in addition to, an export form certificate. A reasonable additional fee may be charged when the inspection necessary for the issuance of such special certificate requires additional time or an examination or certification at some time or place other than that at which the original inspection was made.

33.12 Issuance of certificate; requirements.—The issuance of a certificate does not excuse any person who fails to comply with any regulatory laws or requirements applicable to apples or pears shipped in foreign commerce. No certificate shall be issued except upon a showing satisfactory to the Director that the apples or pears shipped in foreign commerce comply with the tolerances for any arsenical or lead spray residue established under the Federal Food, Drug, or Cosmetic Act, as aforesaid.

33.13 Minimum quality requirements for shipments in export.—(a) *Apples.*—Any lot of apples in packages shipped or transported in foreign commerce must meet each minimum requirement of the U. S. Utility or the U. S. Utility Early grade, as specified in the United States Standards for Apples, issued by the Department in October 1937, and reissued in October 1939, subject to the tolerances for the applicable grade, except that such apples shall not contain apple maggots and, of such apples, not more than 2 percent may have apple maggot injury and not more than 2 percent may be infested with San Jose scale: *Provided*, That any lot of apples in containers conspicuously marked "cannery" may be shipped or transported, as aforesaid, if such lot of apples meets each minimum requirement of the U. S. No. 2 grade, as specified in the U. S. Standards for Cannery Apples (1930), issued by the Department on July 23, 1930, and reissued on August 30, 1943, subject to an aggregate tolerance of 10 percent for defects of this grade.

(b) *Pears.*—Any lot of pears in packages shipped or transported in foreign commerce must meet each minimum requirement of the applicable U. S. No. 2 grade, as specified (1) in the U. S. Standards for Summer and Fall Pears, such as Bartlett, Hardy, and other similar varieties, effective June 27, 1940, issued by the Department on June 26, 1940, and reissued September 3, 1942, or (2) in the U. S. Standards for Winter Pears, such as Anjou, Bosc, Nellis, Comice, and other similar varieties, effective July 8, 1940, issued by the Department on June 23, 1940, and reissued on May 20, 1942, subject to the tolerances permitted for such applicable grade, except that such pears shall not contain apple maggots and, of such pears, not more than 2 percent may have apple maggot injury and not more than 2 percent may be infested with San Jose scale: *Provided*, That any lot of pears in containers conspicuously marked "cannery" may be shipped or transported, as aforesaid, if such lot of pears meets each minimum requirement of the U. S. No. 2 grade, as specified in the U. S. Standards for Pears for Canning, effective June 12, 1939, issued by the Department on June 6, 1939, and reissued September 13, 1939, subject to an aggregate tolerance of 10 percent for defects of this grade.

(c) *Exception to maturity requirements.*—Any lot of apples or pears in packages shipped to a trans-Pacific port need not comply with the maturity standards of the applicable grade, if the packages are conspicuously marked or branded with the words "Immature fruit."

33.14 Less than carload lots.—Shipments of less than carload lots of apples or pears to Mexico, Cuba, the West Indies, Bahamas, Bermuda Islands, Newfoundland, or other islands adjacent to North America, or to any country in Central America or South America except Argentina, or to any African port not on the Mediterranean Sea, or to any trans-Pacific port, need not comply with the requirements of the act or the regulations in this part: *Provided*, That any shipment of apples or pears of less than 200 pounds gross weight in packages to any foreign destination shall not be subject to the provisions of the act or the regulations in this part.

33.15 Packing and marking requirements for shipments in export.—(a) *Packages; packing.*—Each package shall be packed so that the apples or pears in the shown face shall be reasonably representative in size, color, and quality of the contents of the package.

(b) *Packages; marking.*—Any package of apples or pears shipped in foreign commerce shall be plainly and conspicuously marked with (1) the name and address of the grower or packer; (2) the variety of the apples or pears; (3) the grade names, not lower than those specified in sec. 33.13; and (4) the numerical count or the minimum size of such apples or pears.

33.16 Fee for certificate.—The fee for the issuance of a certificate shall be the fee charged at that time and place where a certificate is issued for an inspection made under the Farm Products Inspection Act: *Provided*, That when any lot of apples or pears, with respect to which a farm products inspection certificate has been issued stating that the fruit meets the requirements of the

act and the regulations of this part, arrives at any terminal market or point of export, an export form certificate may be substituted for such farm products inspection certificate for a fee of \$1.00, or, for a similar fee, such farm products inspection certificate may be stamped with the words "Export Form Certificate."

33.17 Complaint, notice, hearing, and order.—Upon receipt of complaint from any person alleging that any apples or pears have been shipped or transported in foreign commerce in violation of any of the provisions of the act or the regulations in this part, the Director shall cause such investigation of the facts to be made as he deems proper. If it appears from the investigation that there has been a violation of the act or the regulations in this part, the Director shall cause notice to be given to the person accused of the nature of the charges against him and of the specific cases in which violation of the act or the regulations in this part is charged. The person accused shall be given an opportunity for a hearing not less than 10 days after notice of such hearing has been served upon him. At such hearing the person complained of will be entitled to be present in person or by counsel and to submit evidence and argument in his behalf. Any order to withhold the issuance of a certificate, as provided in section 6 of the act, will be effective from the date of its service upon the person found to have been guilty. Such order will state the inclusive dates during which it is to remain in effect, and during this period no inspector employed or licensed by the Secretary under the Farm Products Inspection Act shall issue any certificate to such person.

33.18 Service of notice or order.—Service of any notice or order required by the act or prescribed by the regulations in this part shall be deemed sufficient if made by registered mail or personally upon the person served. If it is impossible to make service, as aforesaid, upon the person named in the notice or order, service may be made by leaving a copy of such notice or order with an employee or agent at such person's usual place of business or abode or with any member of his immediate family at his place of abode. If the person named is a partnership, association, or corporation, service may similarly be made by service on any member of the partnership or any officer, employee, or agent of the association or corporation.

33.19 Effective date.—August 8, 1947, is the effective date of this revision which is designed to reflect the current organization of the Department insofar as the administration and enforcement of the act and the regulations in this part are concerned.

It is directed that, within two weeks after the publication of this revision in the Federal Register, notice of this revision and of the effective time hereof shall be published in at least two trade papers of the fruit industry.

Done at Washington, D. C., this 24th day of July 1947.

[SEAL]

N. E. DODD,
Acting Secretary of Agriculture.

TEXT OF THE ACT

(48 Stat. 123; 7 U. S. C. Secs. 581-589)

To promote the foreign trade of the United States in apples and/or pears, to protect the reputation of American-grown apples and pears in foreign markets, to prevent deception or misrepresentation as to the quality of such products moving in foreign commerce, to provide for the commercial inspection of such products entering such commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person to ship or offer for shipment or for any carrier, or any steamship company, or any person to transport or receive for transportation to any foreign destination, except as provided in this Act, any apples and/or pears in packages which are not accompanied by a certificate issued under authority of the Secretary of Agriculture showing that such apples or pears are of a Federal or State grade which meets the minimum of quality established by the Secretary for shipment in export. The Secretary is authorized to prescribe, by regulations, the requirements, other than those of grade, which the fruit must meet before certificates are issued. The Secretary shall provide opportunity, by public hearing or otherwise, for interested persons to examine and make recommendation with respect to any standard of export proposed to be established or designated, or regulation prescribed, by the Secretary for the purposes of this Act.

SEC. 2. The Secretary shall give reasonable notice through one or more trade papers of the effective date of standards of export established or designated by him under this Act: *Provided*, That any apples or pears may be certified and shipped for export in fulfillment of any contract made within six months prior to the date of such shipment if the terms of such contract were in accordance with the grades and regulations of the Secretary in effect at the time the contract was made.

SEC. 3. Where the government of the country to which the shipment is to be made has standards or requirements as to condition of apples or pears the Secretary may in addition to inspection and certification for compliance with the standards established or designated hereunder inspect and certify for determination as to compliance with the standards or requirements of such foreign government and may provide for special certificates in such cases.

SEC. 4. Apples or pears in less than carload lots as defined by the Secretary may, in his discretion, be shipped to any foreign country without complying with the provisions of this Act.

SEC. 5. For inspecting and certifying the grade, quality, and/or condition of apples and/or pears the Secretary shall cause to be collected a reasonable fee which shall, as nearly as may be, cover the cost of the service rendered. *Provided*, That when cooperative arrangements satisfactory to the Secretary, or his designated representative, for carrying out the purposes of this Act cannot be made the fees collected hereunder in such cases shall be available until expended to defray the cost of the service rendered, and in such cases the limitations on the amounts expended for the purchase and maintenance of motor-propelled passenger-carrying vehicles shall not be applicable: *Provided further*, That certificates issued by the authorized agents of the United States Department of Agriculture shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained.

SEC. 6. After opportunity for hearing the Secretary is authorized to refuse the issuance of certificates under this Act for periods not exceeding ninety days to any person who ships or offers for shipment any apples and/or pears in foreign commerce in violation of any of the provisions of this Act. Any person or any common carrier or any transportation agency knowingly violating any of the provisions of this Act shall be fined not less than \$100 nor more than \$10,000 by a court of competent jurisdiction.

SEC. 7. The Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act, and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person, whether operating in one or more jurisdictions; and shall have the power to appoint, remove, and fix the compensation of such officers and employees not in

conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, binding, telegrams, telephones, law books, books of reference, publications, furniture, stationery, office equipment, travel, and other supplies and expenses including reporting services, as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and as may be appropriated for by Congress. This Act shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects as this Act; but it is intended that all such statutes shall remain in full force and effect except insofar as they are inconsistent herewith or repugnant hereto.

SEC. 8. If any provision of the Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 9. That when used in this Act—

(1) The term "person" includes individuals, partnerships, corporations, and associations.

(2) The term "Secretary of Agriculture" means the Secretary of Agriculture of the United States.

(3) Except as provided herein, the term "foreign commerce" means commerce between any State, or the District of Columbia, and any place outside of the United States or its possessions.

(4) The term "apples and/or pears" means fresh whole apples or pears, whether or not they have been in storage.

Approved, June 10, 1933.

